

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-156 (Sub-No. 25X)

DELAWARE AND HUDSON RAILWAY COMPANY, INC. – DISCONTINUANCE OF
TRackage RIGHTS EXEMPTION – IN SUSQUEHANNA COUNTY, PA, AND BROOME,
TIOGA, CHEMUNG, STEUBEN, ALLEGANY, LIVINGSTON, WYOMING, ERIE, AND
GENESEE COUNTIES, NY

Decided: November 10, 2004

On October 21, 2004, a notice was served and published in the Federal Register (69 FR 61904) instituting a proceeding on Delaware and Hudson Railway Company, Inc.'s (D&H) petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 for D&H to discontinue overhead trackage rights over approximately 229.55 miles of railroad line owned and operated by Norfolk Southern Railway Company (NSR) between Lanesboro, PA, and Buffalo, NY. The specific lines proposed for discontinuance by D&H include: (1) NSR's line between milepost 189.8± in Lanesboro, PA, and CP Coles at milepost 210.9± in Binghamton, NY; (2) NSR's Southern Tier Line between milepost 217.0± in Binghamton, NY, and milepost 419.8± in Buffalo, NY; (3) NSR's Bison Running Track between the point of connection with the Southern Tier Line at milepost 419.8± and the point of connection with the lines of CSX Transportation, Inc. (CSXT), at milepost 423.3± in Buffalo, NY (including NSR's SK Yard, which D&H currently operates under an agreement between D&H and Consolidated Rail Corporation dated February 1, 1984), a distance of approximately 3.5 miles; and (4) NSR's Howard Street Running Track between the point of connection with the Bison Running Track at milepost 420.15± and the point of connection with the lines of CSXT at milepost 422.3±, a distance of approximately 2.15 miles. D&H will retain trackage rights over NSR's line between milepost 210.9± and milepost 217.0± in Binghamton, NY, because D&H requires the use of that segment for ongoing operations in the Binghamton terminal area.

On November 1, 2004, Samuel J. Nasca, on behalf of the United Transportation Union -New York Legislative Board (UTU-NY), filed an appeal of the October 21, 2004 notice and a request for an extension of time from November 10th until December 20th, to file a reply to the petition for exemption for discontinuance of trackage rights. The filing asserts that this proceeding presents exceptional circumstances warranting an oral hearing and that, under 49 U.S.C. 10502(b), the date for the final decision should be changed to July 1, 2005, 9 months from the date the exemption request was filed. On November 5, 2004, Canadian Pacific Railway Company and D&H, jointly, and NSR filed motions in opposition to the appeal. We will deny the appeal and the request for an extension of time.

DISCUSSION AND CONCLUSIONS

UTU-NY asserts that the scope of this transaction and the fact that it is related to the notices of exemption filed in STB Finance Docket No. 34561, Canadian Pacific Railway Company – Trackage Rights Exemption – Norfolk Southern Railway Company, and STB Finance Docket No. 34562, Norfolk Southern Railway Company – Trackage Rights Exemption – Delaware and Hudson Railway Company, Inc., make it an extraordinary case that will significantly impact competition and D&H employees and, thus, should be set for oral hearing. It appears, however, that all material issues of fact can be decided on the basis of written statements, and that the proceeding can be processed efficiently without oral testimony, see 49 CFR 1112.1, and UTU-NY has not persuaded us otherwise. Moreover, any request for an oral hearing was due by October 11, 2004, 10 days from the date the petition was filed. See 49 CFR 1152.26. UTU-NY did not file its petition until November 1, 2004. Accordingly, this proceeding will be handled under modified procedure and the request for an oral hearing will be denied.

UTU-NY contends that, under 49 U.S.C. 10502(b), the Board has 9 months to issue a decision on the merits of an exemption proposal. In light of the time frames in 49 U.S.C. 10904(c) for the submission of offers of financial assistance (OFAs), it is the Board's practice to issue decisions on the merits of an abandonment or discontinuance proposal – whether presented in an application or a petition for exemption – within 110 days of their filing. See Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894, 910-11 (1996). Even though an OFA may be less likely where overhead trackage rights are discontinued, UTU-NY has not shown why we should delay resolution of this case for an additional 5 months to consider the petition and issue a decision on its merits. Therefore, the due date for a final decision will not be changed.

Further, an extension of time to reply to the petition for exemption will be denied. UTU-NY has not demonstrated why it needs the requested extension, particularly in light of the fact that it has been on notice of the petition since at least October 1, 2004, when D&H filed it with the Board.

It is ordered:

1. The appeal of the October 21, 2004 notice, including the request for an oral hearing, is denied.
2. The request for an extension of time to file replies to the petition for exemption for discontinuance of trackage rights is denied.

3. This decision is effective on its date of service.

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams
Secretary